

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Rob Kellam,	:	
	:	C.A. No. 05-08-0131AP
Defendant below/	:	
Appellant,	:	
	:	
v.	:	
	:	
Romayne B. Seward,	:	
	:	
Plaintiff below/	:	
Appellee.	:	

Submitted: May 22, 2006

Decided: May 22, 2006

Decision on appeal from the Justice of the Peace Court.

Appellant's appeal is dismissed for lack of jurisdiction.

**Timothy A. Reisinger, Esquire, 19 South State Street, Dover, Delaware 19901,
Attorney for Appellant.**

**Romayne B. Seward, 434 Sudlersville Road, Clayton, Delaware 19938, Pro Se
Appellee.**

Trader, J.

In this civil appeal from the Justice of the Peace Court, the appeal must be dismissed because the parties in the proceeding before the Justice of the Peace Court are not the same parties to this appeal *de novo*.

The relevant facts are as follows: On June 20, 2005, the appellee, Romaine B. Seward, filed suit in Justice of the Peace Court 16 against the appellant, Rob Kellam, and against Sandy E. Eigenbrode. On August 11, 2005, a judgment by default was entered against both defendants, and on August 25, 2005, the appellant filed an appeal with this Court. The co-defendant did not take an appeal to this Court and has not been joined in this appeal.

It has been held that the right to a *de novo* appeal from the Justice of the Peace Court extends only to review by retrial the same cause of action heard and decided at the Justice of the Peace Court level. *Gaster v. Belak*, 318 A.2d 628 (Del. Super. 1974). The McDowell Rule or the mirror image rule was first set forth in *McDowell v. Simpson*, 1857 WL 1024 (Del. Super. Jan. 1, 1857). The rule requires “exactness in the names of the parties, the number of parties, and the character in which the parties are sued. Any variance in name, number, or character is deemed fatal to a *de novo* appeal.” *Sulla v. Quillen*, 1987 Del. Super. LEXIS 1331 at *3 (Del. Super. Sept. 24, 1987).

The mirror image rule has been incorporated into Civil Rule 72.3 of the Civil Rules of the Court of Common Pleas. The rule provides that an appeal to this Court that fails to join the identical parties and raise the same issues that were before the court below shall result in a dismissal on jurisdictional grounds.

In the present case, the appellant has taken an appeal to this Court but the co-defendant against whom a civil action was brought in the court below has not been joined

in the appeal. When there are parties omitted in a *de novo* appeal, there is no mirror image from below and the appeal is incomplete. Because of the absence of the defendant, Sandy Eigenbrode, this appeal is incomplete and this Court lacks jurisdiction to hear this appeal. A change in parties on appeal from the party litigants below is a jurisdictional bar to a trial *de novo* in this Court.

The appellant contends that he may add the co-defendant to the proceedings by an amendment. I disagree. An amendment could be permitted in an appellant proceeding to correct a defect unless the defect is jurisdictional. In this case the defect is jurisdictional and an amendment to the pleadings is allowed within fifteen days after the day of judgment. The appellant may not amend after the time permitted to perfect the appeal has expired. *Dzedzej v. Prusinski*, 259 A.2d 384 (Del. Super. 1969).

Accordingly, this appeal is dismissed for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Merrill C. Trader
Judge